

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BLAKE L. ANDERSON,

Plaintiff,

v.

CITY OF LAS VEGAS, *et al.*,

Defendants.

3:18-cv-00486-MMD-CBC

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE¹**

Before the Court is Plaintiff Blake L. Anderson's ("Anderson"), application to proceed *in forma pauperis* (ECF No. 1), his *pro se* civil rights complaint (ECF No. 1-1), and his motion for screening (ECF No. 1-2). For the reasons stated below, the Court recommends that Anderson's *in forma pauperis* application (ECF No. 1) be granted, that his complaint (ECF No. 1-1) be dismissed without prejudice, and without leave to amend, and that the motion for screening (ECF No. 1-2) be denied as moot, in light of this report and recommendation.

I. *IN FORMA PAUPERIS* APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]."

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 The application must be made on the form provided by the court and must include a financial
2 affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

3 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with some
4 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir.
5 1981) (quotation marks and citation omitted). A litigant need not "be absolutely destitute to
6 enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331,
7 339 (1948).

8 A review of the application to proceed IFP reveals Anderson cannot pay the filing fee;
9 therefore, the Court recommends that the application be granted.

10 **II. SCREENING STANDARD**

11 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
12 provides, in relevant part, that "the court shall dismiss the case at any time if the court
13 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim
14 upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is
15 immune from such relief." 28 U.S.C. § 1915A(b). A complaint is frivolous when "it lacks an
16 arguable basis in either law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). This
17 includes claims based on legal conclusions that are untenable (e.g., claims against
18 defendants who are immune from suit or claims of infringement of a legal interest which
19 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
20 delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th
21 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
22 standard applied in the context of a motion to dismiss under Federal Rule of Civil Procedure
23 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which requires dismissal
24 where the complaint fails to "state a claim for relief that is plausible on its face," *Bell Atl.*
25 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

26 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*
27 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must

1 accept as true all well-pled factual allegations, set aside legal conclusions, and verify that
 2 the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679
 3 (2009). The complaint need not contain detailed factual allegations, but must offer more
 4 than “a formulaic recitation of the elements of a cause of action” and “raise a right to relief
 5 above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is taken in reviewing
 6 the pleadings of a *pro se* party, for a more forgiving standard applies to litigants not
 7 represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Still, a liberal
 8 construction may not be used to supply an essential element of the claim not initially pled.
 9 *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is appropriate, a *pro se*
 10 plaintiff should be given leave to amend the complaint and notice of its deficiencies, unless
 11 it is clear that those deficiencies cannot be cured. *Cato v. United States*, 70 F.3d 1103,
 12 1107 (9th Cir. 1995).

13 **III. SCREENING OF COMPLAINT**

14 In his complaint, Anderson sues Defendants City of Las Vegas, State of Nevada,
 15 Deputy District Attorney William Rowles, Judge Joseph Sciscento, and Deputy Public
 16 Defender Patricia Doyle under 42 U.S.C. § 1983. (See ECF No. 1-1.) Anderson alleges the
 17 following: On April 4, 2016, the defendants “committed an illegal act of fraud.” (*Id.* at 3.)
 18 After Anderson stated on the record that he did not understand what was going on, Judge
 19 Sciscento entered a plea of not guilty, failed to release Anderson, and set bail at \$300,000.
 20 (*Id.*) Rowles “did nothing” and Doyle illegally moved to be appointed to Anderson’s case,
 21 even though a conflict existed. (*Id.*) Based on these allegations, Anderson asserts
 22 violations of his due process rights and seeks monetary damages. (*Id.* at 4-5, 8.)

23 42 U.S.C. § 1983 aims “to deter state actors from using the badge of their authority
 24 to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d
 25 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir. 2000)).
 26 The statute “provides a federal cause of action against any person who, acting under color
 27 of state law, deprives another of his federal rights[.]” *Conn v. Gabbert*, 526 U.S. 286, 290

1 (1999), and is “merely . . . the procedural device for enforcing substantive provisions of the
2 Constitution and federal statutes.” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).
3 Claims under § 1983 require the plaintiff to allege (1) the violation of a federally-protected
4 right by (2) a person or official who acts under the color of state law. *Anderson v. Warner*,
5 451 F.3d 1063, 1067 (9th Cir. 2006).

6 However, § 1983 is not a backdoor through which a federal court may overturn a
7 state court conviction or award relief related to the fact or duration of a sentence. Section
8 1983 and “the federal habeas corpus statute . . . both provide access to the federal courts
9 ‘for claims of unconstitutional treatment at the hands of state officials, . . . [but] they different
10 in their scope and operation.’” *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir. 2003) (quoting
11 *Heck v. Humphrey*, 512 U.S. 477, 48 (1994)). Federal courts must take care to prevent
12 prisoners from relying on § 1983 to subvert the differing procedural requirements of *habeas*
13 *corpus* proceedings under 28 U.S.C. § 2254. *Heck*, 512 U.S. at 486-87; *Simpson v.*
14 *Thomas*, 528 F.3d 685, 695 (9th Cir. 2008). When a prisoner challenges the legality or
15 duration of his custody, raises a constitutional challenge which could entitle him to an earlier
16 release, or seeks damages for purported deficiencies in his state court criminal case, which
17 effected a conviction or lengthier sentence, his sole federal remedy is a writ of *habeas*
18 *corpus*. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Heck*, 512 U.S. at 481; *Wolf v.*
19 *McDonnell*, 418 U.S. 539, 554 (1974); *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Simpson*,
20 528 F.3d at 692-93. Stated differently, where “a judgment in favor of the plaintiff would
21 necessarily imply the invalidity of his conviction or sentence,” then “the complaint must be
22 dismissed unless the plaintiff can demonstrate that the conviction or sentence has already
23 been invalidated.” *Heck*, 512 U.S. at 487.

24 It is apparent that Anderson is challenging the constitutionality of his state court
25 criminal proceeding. Consequently, he must demonstrate that his conviction has been
26 overturned to proceed in an action under § 1983. As he has not done so, his sole relief is a
27 *habeas corpus* action. The Court, therefore, recommends that the complaint be dismissed

1 without prejudice and without leave to amend.

2 **IV. CONCLUSION**

3 For the reasons articulated above, the Court recommends that Anderson's
4 application to proceed *in forma pauperis* (ECF No. 1) be granted, Anderson's complaint
5 (ECF No. 1-1) be dismissed without prejudice and without leave to amend, and the motion
6 for screening (ECF No. 1-2) be denied as moot, in light of this report and recommendation.

7 The parties are advised:

8 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
9 Practice, the parties may file specific written objections to this Report and Recommendation
10 within fourteen days of receipt. These objections should be entitled "Objections to
11 Magistrate Judge's Report and Recommendation" and should be accompanied by points
12 and authorities for consideration by the District Court.

13 2. This Report and Recommendation is not an appealable order and any notice
14 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
15 Court's judgment.

16 **V. RECOMMENDATION**

17 **IT IS THEREFORE RECOMMENDED** that Anderson's application to proceed *in*
18 *forma pauperis* (ECF No. 1) be **GRANTED**;

19 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** Anderson's complaint (ECF
20 No. 1-1);

21 **IT IS FURTHER RECOMMENDED** that Anderson's complaint (ECF No. 1-1) be
22 **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND**; and

23 **IT IS FURTHER RECOMMENDED** that Anderson's motion for screening (ECF No.
24 1-2) be denied as moot, in light of this report and recommendation.

25 **DATED:** September 17, 2019.

26 
27 **UNITED STATES MAGISTRATE JUDGE**